IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 24 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Applicant(s)
Versus
KANUBHAI HIPABHAI MAKWANA - Respondent(s)

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Appearance :
PUBLIC PROSECUTOR for Applicant(s) : 1,
RULE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT
Date : 26/06/2006

ORAL JUDGMENT

1. Heard Shri I.M.Pandya for the applicant – State of Gujarat and the respondent is duly served. None appears for respondent. This Court had issued Rule (Coram: Mr. N.N.Mathur, J.) on 19th March, 1997. The record shows that the respondent was served on 2nd April, 1997.

2. The application preferred under Sections 397 and 401 of the Code of Criminal Procedure; 1973 against the judgment and order passed by the learned J.M.F.C., Bagasara, on 28th October, 1996 below application Exh.54 in Criminal Case No. 162 of 1994. The Records & Proceedings was called for vide order dated 20th December, 2002.

3. The opponent/original accused was arrested for the offence punishable under Sections 7 and 16 of the Prevention of Food Adulteration Act; 1954 (hereinafter referred to as “the Act” for short). The necessary complaint came to be lodged, which was numbered as Criminal Case No. 162 of 1994. The criminal complaint was registered as the sample food article of milk, which was collected on 20th August, 1993 from the accused, was not confirming to the standards and provisions laid down under the Act. The Public Analyst Report dated 2nd December, 1993 clearly indicates that the sample food article of milk

was not in conformity with the standards laid down in the Rules. The trial Court, after recording the deposition of the Food Inspector – complainant at Exh.27, received a miscellaneous application Exh.54 under Section 245 of the Code of Criminal Procedure seeking discharge of the accused on the ground that the Food Inspector did not have the requisite qualification and training to be appointed as such and also on the ground that the requisite preservative formalin was not added in the sample as per the requirement of law and on the ground that there was a doubt with respect to the licence. This application was placed on record on 26th June, 1996 as it appears from the record. It was ordered to be fixed for hearing, ultimately, the trial Court passed order below Exh.54 on 28th October, 1996 discharging the accused before drawing the charge for want of adequate evidences. The said order below Exh.54 is under challenge.

4. Shri Pandya has submitted that the trial Court has seriously erred in passing the impugned order inasmuch as, the complainant – Food Inspector has deposed that he was qualified to work as Food Inspector. The Food Inspector has produced on record the Gazette indicating his appointment as such. There was a report of the Public Analyst on record indicating that the sample food article was not in conformity with the standards laid down in the Rules and therefore, it cannot be said that there was a dearth of the evidence so as to discharge the accused. Shri Pandya has submitted that the learned trial Court ought to have considered the decision citied before it in respect of the qualification of the Food Inspector and it was open to the trial Court to go into it at that time of trial. The judgment cited before the trial Court was also reported in ***1996(7) SCC Page-199*** in ***Suresh H. Rajput & Others V/s. Bhartiben Pravinbhai Soni & Ors.*** The Hon'ble Apex Court has clearly observed that the

qualification of the Food Inspector is not looked into when he lays prosecution for adulteration of an article of food. The consent in question was issued by the competent authority and therefore, in view of this Court's observation in ***Ashwin H. Acharya V/s. Ram Dugdhalaya & Ors. r***eported in ***27(2) GLR Page-1218***, it was not open to the trial Court to discharge the accused.

5. This Court has perused the record and heard Shri Pandya at length. The trial Court has clearly erred in not appreciating the ratio laid down by the Hon'ble Apex Court in case of ***Suresh H. Rajput & Ors. (Supra)***. The trial Court has errorneously gone into the qualification of the Food Inspector right at the threshold of the trial. It was not open to the trial Court to discharge the accused right then only on the aspect of lack of training on the part of the Food Inspector. In fact, looking to the record, it appears that the Food Inspector did lack

qualification or training, as it is found by the trial Court in its judgment and order, impugned in the present Criminal Revision Application. The last proviso of Rule – 8 indicates that the persons who are working as Food Inspector before the commencement of the Prevention of Food Adulteration (Amendment) Rules; 1980 are continuing as such after the commencement. In the instant case, the notification appointing the present Food Inspector as such is dated 31st December, 1980 and 7th January, 1981. Thus, assuming for the sake of argument that the Food Inspector lack in requisite training than also in light of the ratio of the Hon'ble Apex Court in case of ***Suresh H. Rajput & Ors. (Supra)***, it was not open to the trial Court to go into this question right at the threshold of the trial. Therefore, on this aspect, the order deserves to be quashed and set aside.

6. The question of validity of licence and additing formalin ought to have been examined in light of

the evidence that may be adduced during the trial.

7. The judgment and order of the trial Court has resulted into miscarriage of justice and it requires to be quashed and set aside.

8. In view of above, the application partly allowed. The order dated 28th October, 1996, impugned in the present Criminal Revision Application, is hereby quashed and set aside and the matter is remanded back to the trial Court for commencing the proceedings and completing the trial, as expeditious as possible.

9. The application is partly allowed to the aforesaid extent only.

10. Rule made absolute.

(S.R.BRAHMBHATT, J.)

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